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RECORDATION NO. 20144-C FILED 1423

SEP 5 1996 11 45 AM

SEP 5 11 44 AM '96

RECEIVED  
SURFACE TRANSPORTATION  
BOARD

September 5, 1996

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a), are three (3) copies of a Sale and Assignment Agreement, dated as of September 3, 1996, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to Equipment Lease Schedule No. 3 to Master Lease Agreement which was previously filed with the Board under Recordation Number 20144-B.

The names and addresses of the parties to the enclosed document are:

Seller/Assignor. NationsBanc Leasing Corporation  
2300 Northlake Centre Drive, Suite 300  
Tucker, Georgia 30084

Buyer/Assignee: MetLife Capital, Limited Partnership  
10900 NE 4th Street, Suite 500  
Bellevue, Washington, 98009

A description of the railroad equipment covered by the enclosed document is:

seventy (70) covered hopper railcars bearing reporting marks and road numbers DME 51230 through DME 51299

Mr. Vernon A. Williams  
September 5, 1996  
Page 2

Also enclosed is a check in the amount of \$21 00 payable to the order of the  
Surface Transportation Board covering the required recordation fee

Kindly return stamped copies of the enclosed document to the undersigned

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Alvord", with a stylized flourish at the end.

Robert W Alvord

RWA/bg  
Enclosures

RECORDATION NO. 20144-C FILED 1425

SALE AND ASSIGNMENT AGREEMENT SEP 5 - 1996 - 11:45 AM

This Sale and Assignment Agreement ("Agreement") is made as of September 3, 1996, by and between NationsBanc Leasing Corporation ("NationsBanc"), as seller, and the entity named in Schedule A, as buyer ("Buyer").

NationsBanc entered into a Master Equipment Lease Agreement No. 02034-00300 dated as of April 9, 1996, between NationsBanc, as Lessor, and Dakota, Minnesota and Eastern Railroad Corporation, as Lessee and Equipment Lease Schedule For Master Lease Agreement No. 3 dated July 31, 1996 (the "Schedule") NationsBanc is the owner of the Equipment as defined therein

Buyer wants to acquire the interest of NationsBanc as an owner/lessor under the Lease, and NationsBanc wants to assign such an interest to Buyer, in accordance with this Agreement

NationsBanc and Buyer agree as follows:

1. Definitions Certain terms used in this Agreement are defined in Schedule A hereto.

2. Assignment NationsBanc hereby sells, assigns, and transfers to Buyer the Lease and Equipment subject thereto identified in Exhibit A (the "*Transferred Interest*"), "AS-IS", "WHERE-IS", WITHOUT REPRESENTATION, RECOURSE, OR WARRANTY (INCLUDING AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE) EXCEPT AS EXPRESSLY PROVIDED HEREIN

3. Assumption Buyer hereby assumes and agrees to be bound by all of the terms, and to undertake all of the obligations and liabilities of NationsBanc as Lessor under, the Contract Buyer agrees to hold NationsBanc harmless from and against any and all claims, liabilities, damages, costs, or expenses, including attorneys' fees, incurred by or asserted against NationsBanc by reason of Buyer's breach of the obligations that Buyer assumes hereunder

4. Closing Procedures By 1 00 p m (Atlanta time) on the date of this Agreement, Buyer will deliver the Purchase Price as defined in Schedule A to NationsBanc, at NationsBanc's office set forth underneath NationsBanc's signature, as the total purchase price for the Buyer's Interest NationsBanc thereupon shall send the original Schedule to Buyer

5. Buyer's Representations and Warranties Buyer represents and warrants to NationsBanc as follows:

(a) Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the state of its incorporation, and has the power to own its assets and to transact the business in which it is presently engaged,

(b) Buyer has the full power, authority, and legal right to execute, deliver, and perform this Agreement, and Buyer's execution, delivery, and performance of this Agreement have been duly authorized by Buyer by all necessary corporate action,

(c) assuming due authorization, execution, and delivery by Buyer, this Agreement constitutes a legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to applicable bankruptcy, insolvency, and other similar laws relating to creditors' rights generally, and to general principles of equity,

(d) the fulfillment of the terms in this Agreement will not conflict with, result in any breach of, or constitute (with or without notice, lapse of time, or both) a default under, Buyer's charter documents or bylaws or any material agreement to which Buyer is a party or by which it is bound, or violate any law or, to Buyer's knowledge, any material order, rule, or regulation applicable to Buyer of any court or of any federal or state regulatory body, administrative agency, or other governmental instrumentality having jurisdiction over Buyer or any of its properties; and

(e) all approvals, authorizations, consents, orders, or other actions of any natural person, of any corporation or other organization, or of any court, government agency, body, or official, required in connection with the execution and delivery of this Agreement by Buyer, have been taken or obtained.

(f) Buyer represents and warrants to NationsBanc that Buyer is buying Buyer's Interest (a) for its own account, for investment, and not with a view to the distribution of an interest therein for securities law purposes, and (b) with its general assets, and not directly or indirectly with the assets of, or in an arrangement or understanding involving, any employee benefit plan or related trust for ERISA purposes

6 NationsBanc's Representations and Warranties NationsBanc represents, warrants and covenants to Buyer as follows.

(a) NationsBanc is a corporation duly organized and validly existing under the laws of North Carolina, and is duly qualified to do business in each jurisdiction wherein such qualification is necessary and the failure to qualify is likely to have a materially adverse effect on the validity or enforceability of Buyer's rights and remedies under this Agreement or the Contract Documents,

(b) NationsBanc has the full power, authority, and legal right to execute, deliver, and perform this Agreement, the Contract Documents to which NationsBanc is a party, and the transactions contemplated hereunder and thereunder, and NationsBanc's execution, delivery, and performance of the foregoing have been duly authorized by NationsBanc by all necessary corporation action,

(c) assuming due authorization, execution, and delivery by all parties thereto other than NationsBanc, this Agreement and the Contract Documents to which it is a party are legal, valid, and binding obligations of NationsBanc, enforceable against NationsBanc in accordance

with their terms, subject to applicable bankruptcy, insolvency, and other similar laws affecting the enforcement of creditor's rights generally, and to general principles of equity;

(d) the fulfillment of the terms in this Agreement will not conflict with, result in any breach of, or constitute (with or without notice, lapse of time, or both) a default under, NationsBanc's charter documents or bylaws or any material agreement to which NationsBanc is a party or by which it is bound, or violate any law or, to NationsBanc's knowledge, any material order, rule, or regulation applicable to NationsBanc of any court or of any federal or state regulatory body, administrative agency, or other governmental instrumentality having jurisdiction over NationsBanc or any of its properties,

(e) NationsBanc has good title to the Transferred Interest, and has and will maintain good title to the Contract Documents, free and clear of all liens and encumbrances other than liens for personal property taxes, or other claims similarly giving rise to statutory liens, that are not yet delinquent, and Buyer's rights under this Agreement and Lessee's rights under the Contract Documents;

(f) the only agreements executed by NationsBanc in connection with the Contracts and the Equipment are the agreements listed on Schedule B,

(g) NationsBanc has not sent notice to Lessee of, and has no knowledge of, an existing event of default or an event that with notice, lapse of time, or both would constitute an event of default under any Contract Document,

(h) NationsBanc has not yet received, from Lessee, any amount under or in connection with any Contract Agreement due on or after the date of this Agreement,

(i) the Lessee has acknowledged delivery and acceptance of each item of Equipment,

(j) NationsBanc has filed or will file coterminously herewith (in accordance with information provided by Lessee) UCC-1 financing statements as to all UCC-1 Equipment and has filed or will file coterminously herewith all documents with the Surface Transportation Board, formerly known as the Interstate Commerce Commission as are required in order to record NationsBanc's interest in the Equipment,

(k) NationsBanc has not violated any federal, state, or local law applicable with respect to any Contract Document or the Lessee, including without limitation any truth-in-lending, consumer credit protection, equal credit opportunity and disclosure laws,

(l) the unpaid balance of the Contract as of the date of this Agreement is set forth in Schedule B,

(m) Lessee has not asserted, nor has NationsBanc committed any act which would provide Lessee any basis to assert, any defense, right of rescission, counterclaim or set off to its obligations under the Contract, and,

(n) In the event any representation or warranty made by NationsBanc in this Agreement is untrue or NationsBanc breaches any covenant contained herein, then NationsBanc will, within ten days of the receipt of a written request from Buyer, repurchase the Transferred Interest for a price equal to an amount that will preserve Buyer's net economic return therein, provided however, such amount shall not exceed the comparable Stipulated Loss Value as defined in the Contract.

## **7      Receipts Collections, and Expenses**

(a) Whenever NationsBanc receives a payment, or other amount due pursuant to the Contract Documents (excluding any initial commitment fees), or whenever NationsBanc makes an application of funds, in connection with the Contract, NationsBanc shall, promptly and in any event not later than seven (7) business days, after receipt, pay over to Buyer all such amounts, less the deduction, if any, of any disbursements which have been made or expenses which have been incurred by NationsBanc as hereinafter provided. For ease of administration, NationsBanc may pay to Buyer any amount due from Lessee, within 10 days of its due date, regardless of whether NationsBanc actually receives that amount from Lessee in a timely manner, but if NationsBanc does not actually receive that amount from Lessee in a timely manner, Buyer shall pay to NationsBanc promptly, and not later than five (5) business days, following demand the amount paid over but not so received by NationsBanc. All amounts received by NationsBanc to be applied to the Contract shall be held in trust by NationsBanc for the benefit of Buyer.

(b) NationsBanc shall use its customary efforts to bill for and collect the sales, use, and personal property taxes in accordance with the Lease. All such collections shall be held and used solely for the purpose collected. NationsBanc shall prepare all required sales, use, personal property, and similar tax returns (except to the extent prepared by Lessees), and pay all required taxes to the extent it has collected funds therefor. At the request of NationsBanc, if required, the Buyer shall execute all such tax returns.

(c) If Lessee fails to pay taxes, assessments, insurance premiums, claims against the Equipment, or any other amount (other than principal or interest) required to be paid under any of the Contract Documents, NationsBanc may, subject to the terms of this Agreement, advance amounts necessary to pay the same provided that NationsBanc obtains Buyer's prior written consent to such advance, and Buyer will promptly reimburse NationsBanc for the amount thereof (that is not reimbursed by Lessee) promptly upon receiving from NationsBanc appropriate invoices relating to the underlying obligation and evidence of payment.

(d) Upon receiving from NationsBanc appropriate invoices relating to the underlying obligation and evidence of payment, Buyer shall promptly deliver to NationsBanc any out-of-pocket expenses (other than normal administrative overhead) incurred by NationsBanc in accordance with the terms of this Agreement (and not reimbursed by Lessee) in connection with the enforcement of the Contract or any Contract Document or the protection and preservation of any of the Equipment, provided that NationsBanc shall not incur any such expenses without Buyer's prior written consent.

(e) Notwithstanding anything in this Agreement to the contrary or in any other agreement between NationsBanc and Buyer to the contrary, in the event of a Prohibited Sale (as defined below), Buyer may elect to terminate the rights of NationsBanc to service the Contract upon 60 days prior written notice promptly after the event of such Prohibited Sale. Until such time as a replacement servicer is identified, NationsBanc shall continue to service the Contract, in accordance with the terms of this Agreement, until such time as NationsBanc shall be directed in writing by Buyer. For purposes hereof, a Prohibited Sale shall mean any sale or other transfer of all or substantially all of the assets of NationsBanc or the attempted transfer of servicing of the Contract where NationsBanc or one of its affiliates no longer directly or indirectly controls the servicing of the Contract.

(f) Notwithstanding anything in this Agreement to the contrary or in any other agreement between NationsBanc and Buyer to the contrary, in the event NationsBanc fails in any material respect to perform its duties to administer the Contract Documents and the Equipment, Buyer may elect to terminate the rights of NationsBanc to service the Contract upon 60 days prior written notice. If NationsBanc cannot provide assurance of its continued ability and willingness to perform such duties within 15 business days of such notice, Buyer may assume the administration of the Contract Documents and the Equipment.

(g) Notwithstanding anything in this Agreement to the contrary or in any other agreement between NationsBanc and Buyer to the contrary, in the event of a material default (lapse of insurance or payment-related default) under the Contract which remains uncured and continuing for 60 days from the date of declaration thereof, Buyer may elect to terminate the rights of NationsBanc to service the Contract upon 60 days prior written notice.

(h) Upon the replacement of NationsBanc as servicer hereunder, NationsBanc shall notify Lessee of such replacement and instruct Lessee to thenceforth render all performance and make all payments to Buyer. Immediately upon such replacement, NationsBanc shall promptly forward to the Buyer all payments and notices thereafter received by it, which amounts shall be held in trust by the NationsBanc for the benefit of the Buyer. NationsBanc agrees to provide Buyer with assistance to facilitate the transfer of such administration in a timely and orderly fashion.

## 8      Servicing

(a) NationsBanc shall service the Contract Documents and the Equipment as NationsBanc would normally do with respect to contracts and Equipment of a comparable nature with respect to which no Assignment is granted.

(b) Buyer shall have the right to examine and make copies of all records with respect to the Contract Documents and the Equipment at any reasonable time during NationsBanc's normal business hours.

(c) NationsBanc shall deliver to Buyer annual financial statements of each Lessee, and all other financial statements required by the Contract Documents, promptly after receipt by NationsBanc. NationsBanc assumes no responsibility for the authenticity, validity, accuracy, or completeness thereof. On or about the first day each month NationsBanc shall provide Buyer with an aging report which shall indicate the amount of payments made on the Contract and the date on which the payment was received by NationsBanc.

9      Modification and Waiver Without the prior written consent of Buyer, NationsBanc shall not agree to the modification, waiver or release of any of the terms of the Contract Documents or to the release, substitution or exchange of any Equipment and shall not consent to any action or failure to act by Lessee. Subject to the foregoing and the other terms set forth in this Agreement, NationsBanc may exercise or refrain from exercising any powers or rights which NationsBanc may have under or in respect of the Contract Documents or the Equipment.

10     Default and Enforcement NationsBanc shall notify Buyer within 30 days of learning of a payment-related default and promptly upon learning of the existence of any other event or condition which would constitute a default under any Contract Document (each an "Event of Default"), and shall inform the Buyer of NationsBanc's plan at that time, or any other time, for declaring default, restructuring the Contract and/or realizing upon, releasing, substituting, or exchanging any of the Equipment. Subject to the terms of this Section 9, NationsBanc shall take such action or refrain from taking action with respect to such Event of Default or other event or plan as NationsBanc shall be directed in writing by Buyer. If NationsBanc shall not have received instructions as above provided within 10 days after the mailing of such plan to the Buyer, NationsBanc until instructed otherwise in accordance with the preceding sentence may, but shall be under no duty to, take or refrain from taking such action with respect to such Event of Default or other event or plan as it shall deem advisable in the best interests of the Buyer. Upon the occurrence of an Event of Default, NationsBanc will upon the direction of Buyer, or as NationsBanc may decide, inspect the Equipment and examine Lessee's books and records pertaining thereto. NationsBanc will afford Buyer the opportunity to accompany NationsBanc on any such inspection and examination. For all purposes of this Sale and Assignment Agreement, the Contract, and the other Contract Documents, in the absence of actual knowledge by a responsible officer of NationsBanc in his or her capacity as such, NationsBanc shall not be deemed to have knowledge of an Event of Default.

11     Risks and Standard of Care

(a) Buyer acknowledges that it has become a party hereto in reliance upon its own independent investigation of each Lessee's financial condition and creditworthiness to the extent deemed necessary or advisable by Buyer, and not in reliance on any information, representation (other than those in § 5), or advice provided by NationsBanc. Buyer further acknowledges that Buyer will, independently and without reliance on NationsBanc and based on such documents and information as Buyer deems appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement.



(b) NationsBanc's sole responsibilities to Buyer in connection with the Contract shall be to administer the Contract with the same care it exercises on its own behalf as though this Agreement had not been executed NationsBanc shall not be liable to Buyer or to any other person (i) unless NationsBanc fails to exercise such care in acting in accordance with the terms of this Agreement or (ii) for any error of judgment or for any action or failure to act, except for NationsBanc's own gross negligence or willful misconduct

(c) Without limiting the generality of the foregoing, NationsBanc (i) may consult with legal counsel (including any Lessee's counsel), independent public accountants, and other experts, and shall not be liable for any action taken or omitted in good faith by NationsBanc in accordance with the advice of any such counsel, accountant, or expert, (ii) except as otherwise provided in Section 4, makes no warranty or representation, express or implied, and shall not be responsible for any statement, warranty, or representation made in or in connection with the Contract Documents or for the financial condition or business affairs of any Lessee or any person liable for the payment of the Contract or performance of any Contract Document or for the existence or value of any Equipment, (iii) except as otherwise provided in Sections 7(a) and 10(b), shall not be responsible for the performance or observance of any term, covenant, or condition of the Contract Documents by any Lessee, and shall not have any duty to inspect the Equipment, or the property or books and records of any Lessee, (iv) except as otherwise provided in Section 4, makes no warranty or representation as to, and shall not be responsible for, the due execution, legality, validity, enforceability, genuineness, sufficiency, or collectability of, the Contract Documents, the Contract, any Equipment, or any other matter, and (v) shall incur no liability under or in respect of Contract Documents or Equipment by acting on any notice, consent, certificate, or other writing (including telecopy) believed by NationsBanc to be genuine or to be signed or sent by the proper person

12     Assignments Buyer may sell or assign Buyer Interest (an "Assignment") to any person (an "Assignee") Upon any proposed Assignment, Buyer shall not enter into any binding Assignment without giving prior written notice thereof to NationsBanc which notice shall include the purchase price and all other relevant terms (the "Terms") NationsBanc shall have 15 days after receipt of such notice to enter into a binding contract with the Buyer to purchase the Buyer's Interest upon the same Terms offered to the proposed Assignee, failing which the Assignment may proceed to the proposed Assignee Notwithstanding the foregoing, Buyer may assign or transfer its interest (or portion thereof) to an affiliated company in which it has at least 80% direct or indirect common ownership or in connection with a merger, consolidation or sale of all or substantially all of its assets. Subject to the foregoing, all of the terms of this Agreement shall benefit and bind the successors and assigns of NationsBanc and Buyer

13     Miscellaneous

(a) The execution of this Agreement shall not be construed to be a partnership or joint venture between NationsBanc and Buyer

(b) This Agreement constitutes the entire agreement of NationsBanc and Buyer with respect to the Contract and the Contract Documents, and shall survive any foreclosure of Equipment

(c) Any notice or demand to be given under this Agreement shall be duly and properly given if in writing and delivered via overnight courier, hand delivery, certified mail (return receipt requested), or in exigent circumstances by facsimile to the addressee at the address or facsimile number set forth below under its signature (or at such other address or facsimile number as such party shall specify to the other in writing)

(d) The headings in this Agreement are for convenience only and are not a substantive part of this Agreement

(e) This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of New York, without regard to its internal choice of law

(f) Except as permitted by § 11, no person shall have any rights hereunder as a third-party beneficiary or otherwise.


(g) This Agreement may be executed separately in counterparts

(h) Except for the Equipment described in the Contract Documents, Buyer shall have no interest in any property of Lessee or any other person liable for payment of any contract or performance of contract documents, now or hereafter taken as Equipment for any other contracts or extensions of credit made to or for Lessee or any such person by NationsBanc or acquired by NationsBanc, or in any property now or hereafter in NationsBanc's possession or control, or in any deposit now or hereafter held by NationsBanc or other indebtedness now or hereafter owing to NationsBanc, which may be or become Equipment for or otherwise available for payment of any contract or performance of contract documents by reason of any cross-collateralization or any general description of secured obligations contained in any mortgage, security agreement, or other document held by NationsBanc, or by reason of the right of setoff, counterclaim, or otherwise, except that if such property, deposit, or indebtedness, or proceeds thereof, shall be applied in reduction of amounts owing under Contract Documents, then Buyer shall be entitled to such application

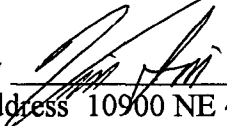
(i) Nothing in this Agreement shall restrict the right of NationsBanc, or any affiliate of NationsBanc's, to engage in other transactions with Lessee. If NationsBanc provides financing to Lessee separate and apart from the Contract and the Contract Documents, then all payments received from Lessee, or from any guarantor of Lessee's obligations, which do not have instructions or other indication(s) of how such payments are to be applied, shall be applied to the Contract, at a minimum, pro rata, based on the percentage that the unpaid balance of the Contract bears to the total unpaid balance of all financing provided by NationsBanc to Lessee

In witness whereof, Buyer and NationsBanc have executed this Sale and Assignment Agreement

Seller NationsBanc Leasing Corporation

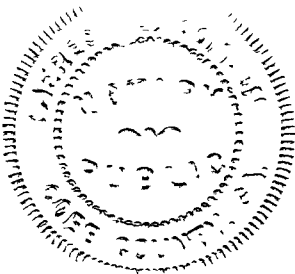
By   
Address 2300 Northlake Centre Drive, Suite 300  
Tucker, Georgia 30084  
Fax: 770-270-8441

Buyer MetLife Capital, Limited Partnership

By   
Address 10900 NE 4th Street  
Bellevue, WA 98004  
Fax 206-646-2753

State of Georgia )  
County of DeKalb ) ss.

On this 2<sup>nd</sup> day of September, 1996 before me, personally appeared Douglas DUCKAY to me personally known, who being by me duly sworn, says that (s)he is the Vice President of Nations Banc Leasing Corp that the seal affixed to the foregoing Sale and Assignment Agreement is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of said instrument was the free act and deed of said corporation



Theresa Coker  
Notary Public

(Seal)

Notary Public, Cobb County, Georgia  
My commission expires January 26, 1998

State of Washington )  
County of King ) ss.

On this 4<sup>th</sup> day of September, 1996 before me, personally appeared Vince Iaci to me personally known, who being by me duly sworn, says that (s)he is the Vice President of MetLife Capital Corporation Limited Partnership that the seal affixed to the foregoing Sale and Assignment Agreement is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of said instrument was the free act and deed of said corporation

Gene F. Harrison  
Notary Public

(Seal)

My commission expires 12/1/97



## SCHEDULE A

<u>Lessee</u>	Dakota Minnesota and Eastern Railroad Corporation
<u>Buyer</u>	MetLife Capital, Limited Partnership
<u>Buyer's Interest</u>	100% of the Contract and Equipment
<u>Equipment</u>	all Equipment leased to Lessee under the Contract Agreement
<u>Contract</u>	a lease between NationsBanc and Lessee pursuant to a Contract Agreement
<u>Contract Agreement</u>	a Master Equipment Lease Agreement and an Equipment Lease Schedule For Master Lease Agreement (or other agreement) between NationsBanc and Lessee, described in Schedule B, pursuant to which NationsBanc has made a Contract
<u>Contract Documents</u>	a Contract Agreement, and any and all guarantees and other documents executed or delivered in connection with the related Contract
<u>NationsBanc</u>	NationsBanc Leasing Corporation

SCHEDULE B

- 1     Lessee                             Dakota Minnesota and Eastern Railroad Corporation
- 2     Amount of Contract             \$3,807,370 00
- 3     Term of Contract             Fifteen (15) years
- 4     Payments                     60 payments of \$26,534 70 commencing August 5, 1996  
followed by 120 payments of \$32,431.56
- 5     Guarantors                   None
6.    Description of Contract Documents, including dates thereof, the parties thereto, and  
recording data, if any             Master Equipment Lease Agreement No 02034-00300  
dated as of April 9, 1996, between NationsBanc, as Lessor,  
and Dakota, Minnesota and Eastern Railroad Corporation,  
as Lessee and Equipment Lease Schedule For Master Lease  
Agreement No 3 dated July 31, 1996 (such Lease Schedule  
being the "Lease") See the Attached Schedule C
- 7     Brief Description of Equipment     Seventy (70) Trinity Industries 5,161 cubic foot, 110 ton  
capacity covered triple hopper railcars  
  DME 51230 - DME 51299